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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945.

No. 385

WILLIAM JEFFRIES, JR., CHARLES R. AIKEN, administrator
de bonis non of the estate of William Jeffries, deceased,
DRAPER AND KRAMER, INCORPORATED, a corporation, and
CHICAGO TITLE AND TRUST COMPANY, a corporation, as
Trustee, etc.,

Petitioners,

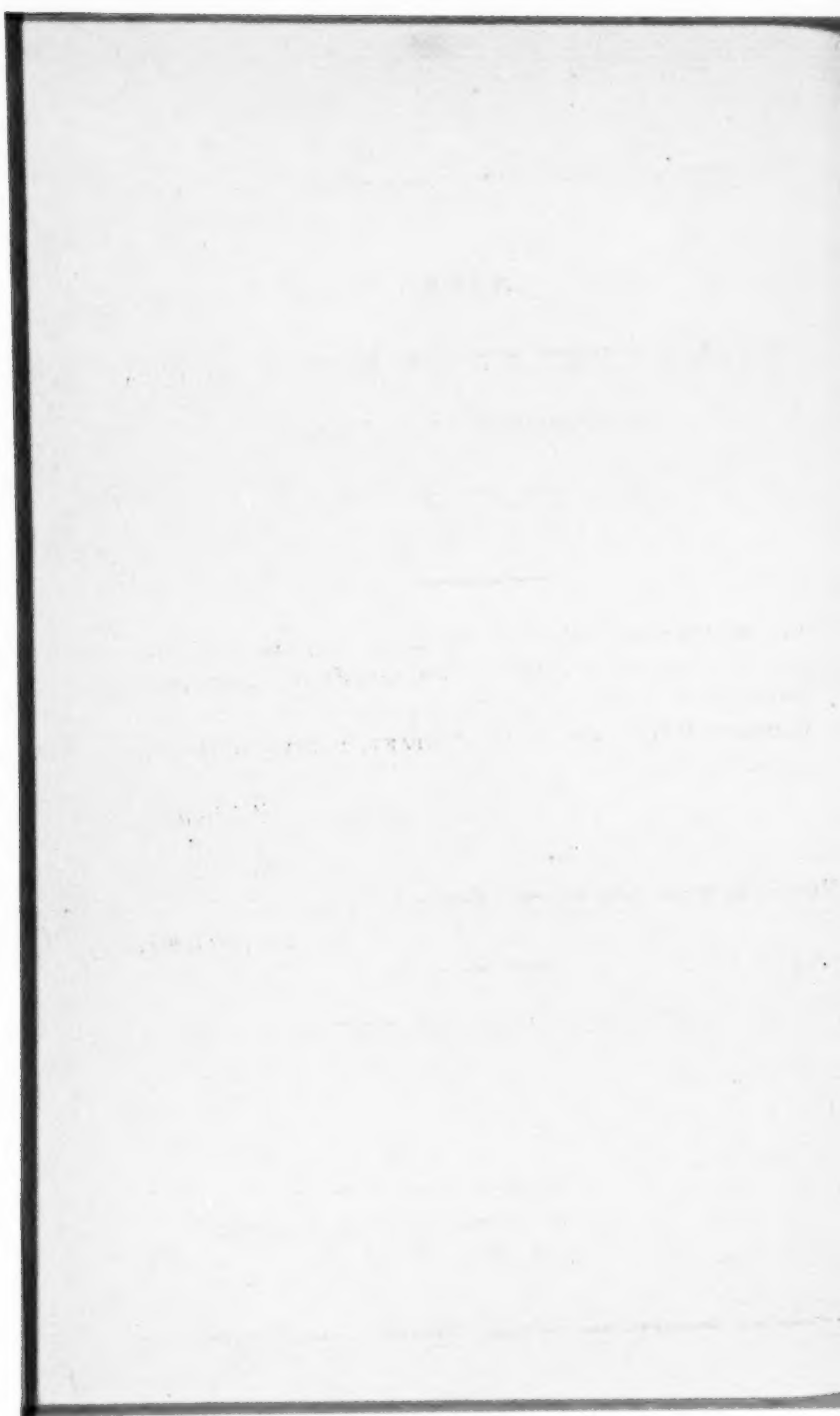
VS.

NELLIE JEFFRIES and HARPER FRENCH,

Respondents.

REPLY BRIEF OF PETITIONERS.

CHARLES RIVERS AIKEN,
77 West Washington Street,
Chicago 2, Illinois.
Counsel for Petitioners.



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May It Please The Court:

Grounds For Review Are Conceded.

The respondents have attempted to answer but two of
the grounds which support the instant petition.

Wholly unanswered, and therefore admitted, points are:

(1) The Court of Appeals should not have decided that a meritless claim cannot support the Federal jurisdiction (Petitioner's brief, pp. 18-21).

(2) Though jurisdiction cannot be conferred or waived by the parties, a counterclaimant by affirmatively invoking it is estopped from questioning the jurisdiction in an effort to escape an unfavorable judgment (Petitioner's brief, pp. 21-22).

(3) The Court of Appeals could not set aside a judgment which was not before it (Petitioner's brief, pp. 22-24).

(4) The Court of Appeals should not have finally disposed of the cause but ought to have remanded it for further proceedings in the District Court as required by statute (Petitioner's brief, pp. 26-27).

(5) The Court of Appeals as a court of equity upon review of a chancery proceeding should not have rewarded a party it found guilty of fraud (Petitioner's brief, p. 27).

Respondent's Argument Supports Principal Point of Petition.

Respondent's argument in defense of the decision below contains the following assertions calculated to justify the dismissal by the Court of Appeals for lack of jurisdiction instead of for want of equity (pp. 9, 11):

"French . . . testified that he was not a brother and that the Estate was not indebted to him . . . thereby destroying any jurisdiction that this Court may have had over him . . .

"The Court was without jurisdiction because of the

evidence given by the plaintiff, Harper French, a feeble minded man, which showed conclusively that there is not a diversity of citizenship or an amount of over \$3,000 involved."

Counsel thus makes clear there is no contention that the plaintiff's complaint was contrived to invoke the Federal jurisdiction.

This Court has held that a claim dismissable under section 37 of the Judicial Code must be "colorable for the purpose of conferring jurisdiction". (*St. Paul Indemnity Co. v. Cab Co.*, 303 U. S. 283, 289.)

Respondent's argument shows, also, that the court below has ruled that the trial court may decide the merits in dismissing a cause for want of a substantial controversy.

Language in the dissenting opinion of *Indianapolis v. Chase National Bank*, 314 U. S. 63, seems peculiarly applicable here (p. 79) :

"The Court cannot resort to a decision of the merits of the case, over which it holds itself to be without jurisdiction . . . The measure of jurisdiction should be taken from the pleadings, unless the claims are frivolous on their face."

Respondents Seek To Bolster Dismissal By New Point.

Although conceding five of seven separate grounds for issuance of the writ, respondent now urges its refusal upon a completely new theory, one not considered by the Court of Appeals. Respondent here contends (p. 8) :

"The jurisdiction of the Court was excluded by the pendency of an action in the Probate Court of Cook County."

This position is the diametrical opposite of the view often taken by this Court. In *Waterman v. Canal-Louisiana Bank Co.*, 215 U. S. 33, the Court said (p. 43):

“The rule stated in many cases in this court affirms the jurisdiction of the Federal Courts to give relief of the nature stated, notwithstanding the statutes of the States undertake to give to State probate courts exclusive jurisdiction over all matters concerning the settlement of accounts of executors and administrators in the distribution of estates.”

The Answer Acknowledges Refusal By Court Of Appeals To Pass Upon a Controlling Question.

The petitioners made a formal motion, supported by separate briefs, to dismiss the appeal from the District Court on the ground it was moot. The Court of Appeals completely ignored the point and refused even to notice the motion.

By her answer in this Court respondent acknowledges the lower court's refusal to pass upon this controlling question. Respondent now states (p. 16):

“The Circuit Court of Appeals was justified in failing to pass upon the motion to dismiss the appeal because it was predicated upon a supposed fraudulent decree.”

The importance of this argument is its admission that such a question is present.

Those Who Seek To Villify Court And Counsel Have Nothing To Lose.

The serious accusations against the master in chancery and opposing counsel contained in respondent's brief are evident falsehoods. Counsel's motive in pursuing such

tactics is likewise plain. Denial, therefore, would bestow dignity where none now exists.

Indulgence in personalities and similar collateral attacks is an ancient device, often resorted to as a diversionary measure where issues cannot be met on their merits.

The brazenness with which claims of dishonesty, bribery, etc., are made in the case at bar is explained by this record. Counsel who hurl these vicious charges with apparent impunity are unscrupulous and irresponsible persons who have nothing to lose.

Mr. Adams, who along with Messrs. William H. Beckman, Daniel M. Healy and Charles F. Hough as counsel for Nellie Jeffries authored this vilification of Court and counsel, already stands convicted in this cause of even more reprehensible misconduct. In this connection we quote the following excerpts from the record appearing in the Master's Final Report (R. 220-222):

"Although grave charges of embezzlement, fraud and other criminal conduct are made by Nellie Jeffries under oath in her countercomplaint against Draper & Kramer, Inc., a reputable real estate management firm, George C. Adams as her counsel casually announced at the hearings that he never contemplated making any proof of such charges (R. 1048-1049, 1057-1059).

"At another stage of the proceedings Mr. Adams stated that he had 'enough nerve to not fear any consequences', that he had no fear of anything (R. 899).

"Nellie Jeffries testified that she did not know anything about what Mr. Adams and Mr. Bruseaux put into the various pleadings which they filed for her (R. 2120-2121). She further testified that she made the following statement to George C. Adams her attorney (R. 2119):

'There is nothing I can tell you to put in that complaint. Whatever you want, you have to make it up yourself.'

"She said she told Mr. Adams after he had made up the countercomplaint (R. 2120):

'I don't know anything about this, whether it is true or not.'

"The record discloses in this connection that detective Bruseaux, Mr. Adams' office associate, acted as the notary public and certified that Nellie Jeffries appeared before him and swore that the contents were known to her and that they were 'true in fact and in substance'.

"Mr. Bruseaux testified that when he was first employed Nellie Jeffries asked him to find a brother of the deceased (R. 413)! Mr. Adams contended upon the trial of this cause that murder might be justifiable, and that his client 'was justified in anything that she did to preserve her rights' (R. 2030), and that she was justified in forging a will for her dead husband (R. 2032)!

"This unbelievable attitude of counsel, that the criminal activities in this litigation are warranted, appears from the following colloquy between counsel and the Master (R. 2028-2032):

'Mr. Adams: We shall attempt to show from the beginning of the world to the present time that he never had an estate and, therefore, she could not defraud him out of that he did not have. . . .

'Mr. Aiken: Now, even let us assume for the purpose of the discussion that counsel might show that from the beginning of the world down to the present time William Jeffries did not have lawful title to this estate, that would in no way excuse the criminal, unlawful conduct of these conspirators. . . .

'Mr. Adams: You might think so, but the Supreme Court has held otherwise, and there is not any exception to the rule, so that I know that

theory is right. . . . We offer the theory that she was justified in anything that she did to preserve her rights.

'The Master: That is rather a novel theory, that a person would be justified in committing a crime in order to protect her rights. That is something new to me.

'Mr. Adams: Here we have another theory, Judge. We have here a number of keen minded lawyers who enter into a conspiracy to cheat and defraud a woman out of her property, and she, in her way, as she seen it—

'The Master: Thought she would beat them by forging a will?

'Mr. Adams: —thought she would beat them out by presenting a will—yes, that is the idea.' "

Conclusion.

The resolution of conflicts of decision and the settlement of important principles of law called for upon this record justify a review of this cause on certiorari.

Respectfully submitted,

CHARLES RIVERS AIKEN,
Attorney for Petitioners.